

Application No.: 10/729,445

Final Office Action dated: September 20, 2006

Response to Final Office Action dated: October 27, 2006

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REMARKS

Claims 1-17 are pending and remain for consideration.

Claims 1, 3, 8 and 14-17 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Lockhart (U.S. Pat. No. 4,817,818). The rejection is traversed and reconsideration is respectfully requested.

Lockhart is directed to a method of dispensing food and drug products in a tamper-proof manner including sealing the products within a tamper-proof container at the manufacturing and/or packaging site and not opening the container until it reaches the retail destination at which point a tamper-proof dispensing unit is attached to the container so that individual products can be removed from the container but cannot be reinserted into the container.

The Examiner argues that Lockhart shows a stop member disposed longitudinally beyond the second longitudinal end of the conduit for providing a barrier to prevent a container from accidentally leaving the conduit. Contrary to the Examiner's assertion, the "stop member" is a dispensing finger disposed within the conduit which can be retracted for dispensing a product. The dispensing finger is positioned and configured to release a product from the conduit. Moreover, the "stop member" of Lockhart is disposed longitudinally between the longitudinal ends of the conduit – not longitudinally beyond the second longitudinal end of the conduit, as is recited in claim 1 of the present application. As shown in FIG. 7 of Lockhart, the dispenser includes no structure disposed longitudinally beyond the longitudinal ends of the conduit. The stop member as is recited in claim 1, on the other hand, is disposed longitudinally beyond the second longitudinal end of the conduit to catch a container by providing a barrier to thereby prevent a container from accidentally leaving the conduit.

With reference to Lockhart, the Examiner states that "member 64 is disposed beyond the bottom end of conduit 112." The Examiner is apparently equating "member 64" of Lockhart with the stop member as recited in claim 1 of the present

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application. It is difficult to follow Examiner's reasoning because "member 64" in Lockhart is the main body portion 64 of the hollow generally cylindrical element 62 of the dispensing unit. It is not understood how the main body portion serves as a stop member, or how the main body portion of a conduit can extend longitudinally beyond the second longitudinal end of itself. If the "stop member" of Lockhart is taken to be the dispensing fingers 88, it has already been demonstrated that the dispensing fingers are not disposed longitudinally beyond the second longitudinal end of the conduit, but rather longitudinally between the longitudinal ends of the conduit.

For an anticipation rejection to be appropriate, each and every element or limitation in a rejected claim must be disclosed in a single prior art reference used in the claim rejection. Because Lockhart does not teach or suggest a stop member associated with the elongated member and disposed longitudinally beyond the second longitudinal end of the conduit for providing a barrier to thereby prevent a container from accidentally leaving the conduit, it cannot be maintained that Lockhart anticipates claim 1. Moreover, because claims 3, 8 and 14-17 each depend from and thereby incorporate the limitations of claim 1, these dependent claims are not anticipated by Lockhart for at least the reasons set forth for claim 1.

Claim 2 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Lockhart in view of Ferro (U.S. Pat. No. 4,781,307). The rejection is traversed and reconsideration is respectfully requested.

Ferro is directed to a ball dispenser for dispensing balls including a first elongated open-ended tube for stacking the balls, a finger-operable dispenser permitting positioning, touch and inspection of a lowermost ball, and release of the lowermost ball by the finger of one hand of the user, so as to leave the other hand free. The finger-operable dispenser mechanism includes a holder mounted near one end of the first tube, a two-position spring-loaded lever pivotably mounted on the holder, and having a ball support portion normally supporting the lowermost ball, a

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finger-operable portion connected to the ball support portion, and a transient ball resting portion opposite the ball support portion, and which protrudes into the first tube interior through a slot formed in the tube. The ball support portion is normally urged by the spring-loaded lever to abut the lowermost ball, when the spring-loaded lever is in a rest position, but permits release of the lowermost ball upon actuation of the finger-operable portion, the transient ball resting portion temporarily blocking release of a ball above the lowermost ball, when the spring-loaded lever is in an actuated position, but resumes an inoperative position when the finger-operable portion reverts to the rest position, whereby the ball previously positioned above the now released, and erstwhile lowermost ball becomes the new lowermost ball, due to the action of gravity.

The Examiner believes that Ferro discloses a "stop member" spaced longitudinally beyond the second longitudinal end of a conduit such that a portion of a container is exposed between the second longitudinal end of the conduit and the stop member for grasping and being dispensed from the conduit. Ferro, however, shows a ball support portion that is opened to allow a golf ball to immediately and completely fall out of a dispenser. The ball support portion is not configured such that a portion of the ball disposed at the second longitudinal end is exposed between the second longitudinal end and the ball support portion for grasping and being dispensed from the conduit.

Moreover, according to the Examiner, it is not the "stop member" placement which exposes an article in Ferro, but rather a slant cut in one side of the conduit. The Examiner defines the second end of the conduit in Ferro with the top end created by the slant cut of container 12. It is Applicant's understanding that the slant cut is in one side of the conduit. The second longitudinal end of the conduit as shown in Ferro is where the open end of the slant in the conduit terminates. Claim 2 of the present application, on the other hand, recites a stop member spaced longitudinally beyond the second longitudinal end such that a portion of a container

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disposed at the second longitudinal end is exposed between the second longitudinal end and the stop member for grasping. Accordingly, the teaching of Ferro does not materially add to the teaching of Lockhart to render claim 2 obvious.

Moreover, claim 2 depends from and thereby incorporates the limitations of claim 1. It has already been demonstrated above that Lockhart contains insufficient teaching to anticipate claim 1. It therefore follows that Lockhart contains insufficient teaching as a primary reference when taken either alone or in combination with Ferro to render obvious claim 2.

Claims 4, 6 and 7 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Lockhart. Claims 4, 6 and 7 each ultimately depend from and thereby incorporate the limitations of claim 1. The rejection is traversed and reconsideration is respectfully requested.

The Examiner believes that Lockhart discloses all of the claimed features except a projection defining an opening to accommodate the neck portion of a container. The Examiner believes that it would have been obvious to modify the apparatus of Lockhart to provide an enlarged portion of a projection to accommodate the neck portion of a container. However, it has already been demonstrated above that the "projections" of Lockhart are dispensing fingers located within the conduit between the longitudinal ends thereof and which are retracted to completely release a bottle from the conduit. There is no teaching or suggestion of a stop member associated with the elongated member and disposed longitudinally beyond the second longitudinal end of the conduit for providing a barrier to thereby prevent a container from accidentally leaving the conduit, as is recited in claim 1 and incorporated in dependent claims 4, 6 and 7. Much less would it have been obvious to modify the dispensing fingers disposed within the conduit of Lockhart to accommodate the neck portion of a container. This is not surprising since the fingers of Lockhart are structured and located for dispensing bottles – not for preventing bottles from accidentally leaving the conduit as is

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claimed in the present application. In view of the foregoing, it cannot be maintained that claims 4, 6 and 7 are obvious in view of Lockhart.

Claim 5 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Lockhart in view of Shelly (U.S. Pat. No. 3,625,397). The rejection is traversed and reconsideration is respectfully requested.

Shelly is directed to a beverage dispenser having a cartridge including a tube for holding a stack of containers, a stop spaced from one end of the tube by about the height of a container, and a spring in the tube for urging the stack of containers toward the stop and to urge the end container against the stop. The end container may be viewed for display purposes and also may be removed from the tube with the spring pushing another container against the stop. The cartridge is carried in a cart, and in this application, a plurality of the tubes are arranged side-by-side with the stop projecting above the upper surface of the cart so that a plurality of containers are viewable at the top of the cart and can be dispensed easily from the top of the cart. A spring normally holds the containers under the stop, and the spring is yieldable to allow removal of the containers from the cartridge. A loader is provided consisting of a tube which may be inserted under the stop to release the spring, the tube carrying containers for either loading the containers into the cartridge or removing containers from the cartridge.

The Examiner believes that Lockhart discloses all of the claimed features of claim 5 except for a projection defining an opening which is open-ended for permitting the neck portion of a container accommodated therein to be pivoted out of the opening in order to dispense the container from the conduit. However, as was mentioned above, Lockhart shows dispensing fingers disposed within the conduit for retracting and thereby allowing a bottle to leave the conduit. Since the dispensing fingers of Lockhart are located well within the conduit between the longitudinal ends thereof and thereby engage bottles that are entirely disposed within and surrounded by the conduit, the fingers cannot be modified to allow the

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neck portion of the bottles to be pivoted out of the opening. In other words, the bottles retained by the dispensing fingers are restrained by the surrounding conduit from being pivoted or otherwise exposed for grabbing. Therefore, Lockhart contains insufficient teaching as a primary reference when taken either alone or in combination with Shelly to render obvious claim 5.

Claims 9-11 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Lockhart in view of Fuss (U.S. Pat. No. 4,261,480). The rejection is traversed and reconsideration is respectfully requested.

Fuss is directed to an article holder and dispenser including an elongate hollow container especially suitable for storing and dispensing nested articles such as ice cream cones, cups and the like along with a particular arrangement for releasably retaining articles of different sizes at the discharge end of the container. This arrangement utilizes a plurality of article retaining elements having resilient but wear resistant article retaining segments located within the hollow container adjacent its discharge opening for establishing the effective size of the opening and for releasably retaining the articles to be dispensed. These elements also include support segments respectively located within and slidably movable along the lengths of cooperating circumferential slots in the container for supporting the article retaining portions in adjustable positions around the periphery of the latter and relative to one another, whereby to vary the effective size of the discharge opening depending upon the size of the articles to be stored and dispensed. A locking ring is provided for maintaining the support segments fixed within their respective slots once their positions are selected, thereby fixing the effective size of the opening.

The Examiner believes that Fuss shows a generally transparent article holder made of a flexible plastic material. However, claims 9-11 each depend from and thereby incorporate the limitations of claim 1. It has already been demonstrated above that Lockhart contains insufficient teaching to anticipate claim 1. It therefore

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follows that Lockhart contains insufficient teaching as a primary reference when taken either alone or in combination with Fuss to render obvious claims 9-11.

Claims 12 and 13 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Lockhart in view of Brewster (U.S. Pat. No. 5,039,046). The rejection is traversed and reconsideration is respectfully requested.

Brewster is directed to a rack of unitary construction comprising a plurality of vertical and horizontal wire-formed members which are designed to retain baby bottles. The invention also includes hanging means and is preferably coated in plastic for durability and corrosion resistance.


The Examiner cites Brewster for showing a bottle holder mounted by suction cups. However, claims 12 and 13 each ultimately depend from and thereby incorporate the limitations of claim 1. It has already been demonstrated above that Lockhart contains insufficient teaching to anticipate claim 1. It therefore follows that Lockhart contains insufficient teaching as a primary reference when taken either alone or in combination with Brewster to render obvious claims 12 and 13.

In view of the foregoing, it is respectfully submitted that claims 1-17 are in condition for allowance. All issues raised by the Examiner having been addressed, an early action to that effect is earnestly solicited.

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No fees or deficiencies in fees are believed to be owed. However,  
authorization is hereby given to charge our Deposit Account No. 13-0235 in the  
event any such fees are owed.

Respectfully submitted,

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